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length and width of the windshield." He said the citation was for a violation considered insignificant and insubstantial because "I didn't feel that . . . the operator's vision was impaired as far as being able to see out the windshield clearly . . . In other words it was not much exposure to foot traffic in the area of people around it." When shown the two photos of the windshields (OX-5 and OX-6) on cross examination, the inspector could not identify the windshield he was testifying about.

In response to questions from the bench, the inspector contradicted his earlier testimony and said that while the condition of the windshield did not make it unsafe to operate the loader, "the condition of the windshield made it difficult for the operator to have good, clear vision out the front of the machine." Nevertheless, the inspector affirmed that "even with the amount of spider-webbing we had here," he did not consider it unsafe to operate the loader.

Once again it was difficult to credit the inspector's description of the condition because the contemporaneous photograph of the windshield, made within a month after the citation was written, shows the only cracking or spider-webbing was in the upper left quadrant and that there was no cracking or spider-webbing in the lower half of the windshield (OX-5). Mr. Gregg Brown, who took the photo, testified the picture showed essentially the same condition that existed on July 19 and that "it didn't continue to shoot spider cracks every which-a-way, no sir. It reached certain--say side to side, and then it stopped." He further testified that after impact the glass did not shatter, that there was no broken glass, and that there was no "hole in either one of the windshields."

Mr. Gregg Brown, the operator's foreman and a part owner of the business, said it was the operator's policy to replace any windshield that had been hit and cracked in the middle so as to obstruct the operator's line of vision. Mr. Brown said he did not consider the 644-C windshield needed replacing because "There's still fifty percent or more of that windshield that is not obstructed, and I did not feel that his line of vision was impaired." On cross examination, Mr. Brown pointed out that while the vision of an operator who had to look through the upper left quadrant to load a truck might have some impairment there was a side window through which he could also look to align his vehicle. He also said the loaders were seldom used to load the trucks as they usually loaded off the conveyor belt.

Counsel for the Secretary argued that the test he applied to determine whether there was a violation was whether there was "even the slightest impairment" and not whether the condition created a hazard to the operator or miners working on